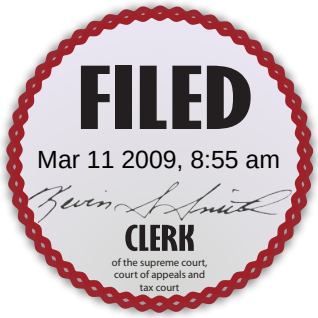

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IN THE
COURT OF APPEALS OF INDIANA

SAMUEL LONNIE HELTON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 79A02-0810-CR-918
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Les A. Meade, Judge
Cause No. 79D05-0705-FD-253 & 79D05-0706-CM-1139

March 11, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Samuel Lonnie Helton appeals his convictions for intimidation as a class D felony[1] and invasion of privacy as a class A misdemeanor.[2] Helton raises two issues, which we restate as whether the evidence is sufficient to sustain his convictions for intimidation as a class D felony and invasion of privacy as a class A misdemeanor. We affirm.

The relevant facts follow. On April 24, 2007, Helton met Tara Underhill and their one-year-old son at a gas station. They then went shopping to purchase shoes for their son. In the Wal-Mart parking lot, Helton and Underhill began arguing because Helton was spending money on his vehicle instead of their son. As they returned to the gas station, Helton jumped out of Underhill's car at a stop light. A few minutes later, as Underhill was waiting at a stop light, she saw Helton drive past going the opposite direction. Underhill heard Helton yell something, heard tires squealing, and saw Helton turn his vehicle around. Helton stopped his vehicle behind Underhill, got out of his vehicle, and repeatedly hit Underhill's car with a baseball bat. A nearby driver, Tiffany Hardesty, heard Helton say "something in the lines of hurting [Underhill]" and "something about killing [Underhill]." Transcript at 47.

On April 26, 2007, Underhill filed a petition for a protective order, and the trial court issued an ex parte protective order under Ind. Code §§ 34-26-5. The order provided that Helton was "prohibited from harassing, annoying, telephoning, contacting, or directly or indirectly communicating with [Underhill]" and that Helton was required to

[1] Ind. Code § 35-45-2-1 (Supp. 2006).

[2] Ind. Code § 35-46-1-15.1 (2004).

"stay away from the residence, school, and/or place of employment of [Underhill]." State's Exhibit 1 at 2-3. On June 5, 2007, Underhill was sitting on her front porch on Pretty Prairie Road when Helton drove past the house with his vehicle's sound system turned up loud. Underhill then went inside with her son, but she heard Helton drive past again about two minutes later. According to Underhill's mother, Helton drove "back and forth in front of [their] house several times blasting his horn [and] yelling obscenities." Transcript at 73. Helton admitted that he drove past the house twice, that he was driving at least 80 miles per hour, and that he was playing loud music with horn-like sound effects and threatening lyrics.

For his April 2007 actions, the State charged Helton with confinement as a class D felony, intimidation as a class D felony, criminal mischief as a class B misdemeanor, and criminal recklessness as a class B misdemeanor. Separately, the State charged Helton with invasion of privacy as a class A misdemeanor for his June 2007 actions. The charges were tried together in a bench trial. The trial court found Helton not guilty of confinement but guilty of the remaining charges. The trial court sentenced him to an aggregate sentence of four years with one year executed in Tippecanoe County Community Corrections and three years suspended to probation.

The issue is whether the evidence is sufficient to sustain Helton's convictions for intimidation as a class D felony and invasion of privacy as a class A misdemeanor. Helton does not appeal his convictions for criminal mischief or criminal recklessness. When reviewing the sufficiency of the evidence to support a conviction, we must

consider only the probative evidence and reasonable inferences supporting the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). We do not assess witness credibility or reweigh the evidence. Id. We consider conflicting evidence most favorably to the trial court's ruling. Id. We affirm the conviction unless "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." Id. (quoting Jenkins v. State, 726 N.E.2d 268, 270 (Ind. 2000)). It is not necessary that the evidence overcome every reasonable hypothesis of innocence. Id. at 147. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict. Id.

A. Intimidation.

The offense of intimidation is governed by Ind. Code § 35-45-2-1, which provides: "A person who communicates a threat to another person, with the intent: (1) that the other person engage in conduct against the other person's will; [or] (2) that the other person be placed in fear of retaliation for a prior lawful act; . . . commits intimidation," which is a class D felony if "the threat is to commit a forcible felony." Thus, to convict Helton of intimidation as a class D felony, the State needed to prove that Helton knowingly or intentionally communicated a threat to Underhill with the intent that she engage in conduct against her will or be placed in fear of retaliation for a prior lawful act and that the threat was to commit a forcible felony.

Helton argues that the evidence is insufficient because "there was no evidence that [hitting Underhill's vehicle or making the verbal threats] was done in order to place [Underhill] in fear of retaliation for a prior lawful act." Appellant's Brief at 13. Helton

contends that the State has shown "no nexus" between Underhill's desire that Helton pay more of his son's expenses and Helton's "actions or statements that day." Id. at 17.

Helton correctly notes that "the State must establish that the legal act occurred prior to the threat and that the defendant intended to place the victim in fear of retaliation for that act." Casey v. State, 676 N.E.2d 1069, 1072 (Ind. Ct. App. 1997). Here, Underhill and Helton got into an argument because Helton wanted to spend money on his vehicle rather than contribute to their son's expenses. As Underhill was returning Helton to his vehicle, Helton jumped out of Underhill's vehicle at a stop light. Just a few minutes later, as Underhill was waiting at a stop light, she saw Helton drive past going the opposite direction. Underhill heard Helton yell something, heard tires squealing, and saw Helton turn around. Helton stopped his vehicle behind Underhill, got out of his vehicle, and repeatedly hit Underhill's vehicle with a baseball bat. A nearby driver, Tiffany Hardesty, heard Helton say "something in the lines of hurting [Underhill]" and "something about killing [Underhill]." Transcript at 47.

We conclude that Underhill's prior lawful act was requesting money for the support of their child. Further, the trial court could have found that Helton's actions and threats, which were close in time to the argument, were done to communicate a threat to Underhill with the intent that she be placed in fear of retaliation for her support request.[3]

[3] Helton's reliance on Ransley v. State, 850 N.E.2d 443 (Ind. Ct. App. 2006), trans. denied, is misplaced. In Ransley, we concluded that the evidence was insufficient to sustain the defendant's conviction for intimidation because the alleged threat was aimed at future action and was, thus, not retaliation for a prior lawful act. Further, we found no evidence that the defendant communicated a threat with the intent that the victim be placed in fear of retaliation for the prior lawful act of arguing. 850

The evidence was sufficient to sustain Helton's conviction for intimidation as a class D felony. See, e.g., Huber v. State, 805 N.E.2d 887, 891 (Ind. Ct. App. 2004) (holding that the evidence was sufficient to sustain the defendant's conviction for intimidation as a class D felony).

B. Invasion of Privacy.

The offense of invasion of privacy is governed by Ind. Code § 35-46-1-15.1, which provides: "A person who knowingly or intentionally violates: . . . (2) an ex parte protective order issued under IC 34-26-5 . . . commits invasion of privacy, a Class A misdemeanor." Thus, to convict Helton of invasion of privacy as a class A misdemeanor, the State needed to prove that Helton knowingly or intentionally violated the protective order issued to Underhill.

Helton argues that the evidence is insufficient to sustain his conviction because he "had a constitutional right to drive on Pretty Prairie Road in order to get from one place to another, as long as he did not trespass at the residence of Tara Underhill." Appellant's Brief at 22. In support of his argument, Helton relies upon VanHorn v. State, 889 N.E.2d 908 (Ind. Ct. App. 2008), trans. denied. In VanHorn, we reversed a defendant's conviction for stalking where the defendant repeatedly parked outside the victim's residence and watched the victim with binoculars. 889 N.E.2d at 914. We concluded that parking on a city street, a public place where the defendant had a lawful right to be,

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N.E.2d at 447-448. Here, Underhill's request for support was a prior lawful act, and we conclude that there was sufficient evidence that Helton intended to place Underhill in fear of retaliation for that act.

did not support a conviction for stalking. Id. at 912-913. However, we specifically noted that the result could have been different if a protective order had been sought. Id. at 913.

Here, Helton was charged with invasion of privacy for violating a protective order rather than stalking. Consequently, we do not find VanHorn controlling. Underhill obtained a protective order, which provided that Helton was "prohibited from harassing, annoying, telephoning, contacting, or directly or indirectly communicating with [Underhill]" and that Helton was required to "stay away from the residence, school, and/or place of employment of [Underhill]." State's Exhibit 1 at 2-3. Helton admittedly drove past Underhill's house twice while he was driving at least 80 miles per hour and playing loud music with horn-like sound effects and threatening lyrics. Moreover, Underhill's mother testified that Helton drove "back and forth in front of [their] house several times blasting his horn [and] yelling obscenities." Transcript at 73. Although Helton argues he was attempting to visit a friend who lived nearby, there were other routes by which Helton could have visited that friend. Under these circumstances, the State presented probative evidence from which the trial court could have concluded that Helton knowingly or intentionally violated the protective order. See, e.g., Hendricks v. State, 649 N.E.2d 1050, 1052 (Ind. Ct. App. 1995) (holding that the evidence was sufficient to sustain the defendant's convictions for invasion of privacy).

For the foregoing reasons, we affirm Helton's convictions for intimidation as a class D felony and invasion of privacy as a class A misdemeanor.

Affirmed.

ROBB, J. and CRONE, J. concur